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## LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 14th August 2025

**S.R.O. No. 668/**2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 9th July 2025 passed in ID Case No. 06 of 2023 [under Section 2-A(2)] by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between 1. Project Officer, IPDP, Laxmisagar, Bhubaneswar, Dist. Khordha, Odisha, 2. Director Animal Husbandry & Services, Odisha, Cuttack, 3. Commissioner-*cum*-Secretary, Fishery & A.R.D. Department, Secretariat, Odisha, Bhubaneswar and Shri Sunil Kumar Bhoi, aged about 32 years, S/o Bhagaban Bhoi, At Bishnupur, P.O./P.S. Nimapara, Dist. Puri-752106 is hereby published as in the schedule below:

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 06 of 2023 [under Section 2-A (2)]

Dated the 9th July 2025

*Present :*

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

*Between :*

The Managements of— . . First Party—Managements

1. Project Officer, IPDP, Laxmisagar, Bhubaneswar, Dist. Khordha, Odisha.
2. Director, Animal Husbandry & Services, Odisha, Cuttack.
3. Commissioner-*cum*-Secretary, Fishery & A.R.D. Department, Secretariat Odisha, Bhubaneswar.

And

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|---|---|---|
| Shri Sunil Kumar Bhoi, aged about 32 years,<br>S/o Bhagaban Bhoi,<br>At Bishnupur, P.O./P.S. Nimapara,<br>Dist. Puri-752106. | . . | Second Party—Workman |

*Appearances :*

| | | |
|---|---|---|
| Shri Amar Kumar Sahoo, Advocate | . . | For the First Party. No. 1 |
| None | . . | For the First Party Nos.2 & 3 |
| Shri Trilochan Lenka, Advocate | . . | For the Second Party |

AWARD

Being disappointed with the inaction of the Labour Machinery in resolving the dispute raised relating to his illegal termination of service w.e.f. the 1st October 2021, the second party has approached this Tribunal by way of filing the present application under Section 2-A (2) of the Industrial Dispute Act, 1947 (hereinafter referred to as "the Act") with a prayer for his reinstatement in service with back wages.

2. The case of the second party, in short, is that on being appointed as a Hen Attendant he continuously worked under the first party No.1 from the 1st October 2013 to the 30th September 2021 and while working as such he was refused employment by the management w.e.f. the 1st October 2021 in gross violation of the provisions of the Act. It is stated by the second party that by the time of such refusal he was receiving a monthly wage of Rs. 900. According to the second party, he having rendered continuous work for a period of more than 240 days while in the employment of the first party No.1, he is entitled to the reliefs claimed; the reason being that the action of the first party No.1 is in contravention of the provisions of the Act and so also in violation of the principles of natural justice, inasmuch as, after terminating his service the first party has engaged new persons namely Badala Khan, Aloka Sahoo and Niroda Sahoo through service provider.

3. Out of the first party managements, who have been arrayed as parties to the "*lis*", the first party No.1, being represented through its Project Officer, contested the claim and filed the written statement. At the outset, the first party No.1 has taken a stand that the instant application is bad for misjoinder of first party Nos.2 and 3 as they were neither parties before the Labour Authority nor any notice was issued to them in the matter. Further, the application is challenged for non-joinder of necessary party as the second party has alleged that three persons have been engaged in his place through Private Agency, who has not been arrayed as a party to the proceeding.

Touching upon the claim, it is stated that for functioning of the Poultry Farm of first party No.1 and to achieve the target, the second party along with four others were engaged in the year 2013-14 on daily wage basis as per need, and that too on rotation basis. Specifically, it is averred that the second party on his own did not turn up to duty from October, 2021 onwards and further he having not discharged duties continuously for a period of more than 240 days under the first party No.1 and such engagement was need based and never continuous one, it is false to allege that he was refused employment by the management or there has been a contravention of the provisions of the Act on the part of the first party No. 1.

4. Considering the respective stand of the parties, the Tribunal framed the following issues for determination:—

ISSUES

*(i)* Whether the case is maintainable?

*(ii)* Whether the action of the Management of Project Officer IRDP, Laxmisagar, Bhubaneswar, Dist. Khurda in terminating the services of Shri Sunil Kumar Bhoi, Ex-Hen Attendant (day-time) w.e.f. the 1st October 2021 by way of refusal of employment is legal and/or justified?

*(iii)* What relief the workman is entitled to?

5. To substantiate their respective stand while the second party examined himself as WW1 and relied on the photo copies of his savings bank pass book along with his complaint addressed to the DLO, Khurda at Bhubaneswar, marked Ext. 1 and photocopies of his attendance sheets marked Ext.2, the first party in its turn examined its Project Officer, In-charge as MW1 and placed reliance on documents which have been marked as Exts.A to K.

FINDINGS

6. *Issue No. (i)*—There remains no controversy over the fact that the second party was continuing as a daily wage labourer under the first party No.1. It further reveals from record that while working as such the second party was refused employment by the first party No.1, w.e.f. the 1st October 2021 which occasioned him to redress grievance before the District Labour Officer, Khurda at Bhubaneswar on the 27th October 2022. It is contended by the management that the second party in his cross-examination at Para. 16 having admitted to have not filed the copy of the complaint dated the 27th October 2022 before this Tribunal, it is hard to believe that ever he had made such a complaint before the DLO seeking necessary relief. On a thorough scrutiny of the record, it is found that copy of the complaint dated the 27th October 2022 though filed by the second party and is available on record with Ext. 1, yet due to inadvertence the same has not been exhibited/assigned with another number. So, it is not considered to be a lapse on the part of the second party and judicial notice can be taken towards the said document, which was duly acknowledged by the office of the DLO. Besides, MW1 in his cross-examination at Para. 24 has admitted that the second party had raised a dispute on the 27th October 2022 before the DLO, Khordha regarding his illegal termination from service w.e.f. the 1st October 2021. According to the second party, when the labour machinery failed to resolve his grievance/complaint within the stipulated period of 45 days, he moved the instant application before this Tribunal challenging his refusal of employment with a prayer for his reinstatement, back wages and all other service benefits. On perusal of the complaint the 27th October 2022 there seems no infraction of the provisions of Section 2-A(2) of the Act by the second party while approaching this Forum and as such, the 2-A(2) application is held to be maintainable. Further, looking to the specific grievance raised by the second party before the labour machinery, the challenge to the maintainability of the application due to misjoinder and non-joinder of parties taken by the first party No. 1 carries a little importance to be discussed herein.

The issue No. (i) is accordingly answered holding the application to be maintainable in this forum.

7. *Issue No. (ii)*—Under this issue the Tribunal is required to determine as to if action of the first party No. 1 in terminating the services of second party workman w.e.f. the 1st October 2021 by way of refusal of employment is legal and justified. In the context, it was forcefully argued on behalf of the second party that with a view to avoid the rigors of the statutory provisions and further

to get the works done through outsourcing personnel, he was refused employment by the first party No. 1. Further contention of the learned counsel is that the second party had never remained absent from his duty as alleged by the first party No.1, rather he was refused employment in sheer violation of the provisions of the Act. The rival contentions of the parties lead this Tribunal to examine the materials available on record so as to arrive at a conclusion on this point.

The examination-in-chief of the second party seems to be the exact reproduction of his stand taken in the claim statement. Specifically, it has been deposed to by the second party that despite his rendering continuous service for a period of nearing eight years the management has terminated his service in the year 2021 in gross violation of the provisions of the Act. Since the first party No. 1 has raised objection on the continuous employment of the second party, now it is to be examined as to how far the second party is able to establish that he had worked continuously under the first party No. 1 for the period from the 1st June 2019 till the 31st August 2020, which is a pre-condition to set into motion the provision of Section 25-F of the Act and to claim relief thereunder. True it is, in a case of this nature the burden is on the claimant to satisfy the Tribunal that he had rendered continuous service for a period of 240 days preceding the date of his termination to invoke the statutory relief as provided under Section 25-F of the Act. In order to prove the above aspect, though the second party relies on Exts. 1 and 2, yet the documents being incomplete, the Tribunal fails to draw any inference therefrom as to the continuous employment of the second party. However, to rebut the claim laid on behalf of the second party, the first party No.1 seems to have taken a definite/consistent plea not only in its written statement but also in its evidence adduced through MW No. 1 that the second party did not discharge continuous duty for a period of 240 days under the first party No.1 and thus he is not entitled to any relief. Even though the first party in its written statement has given a statement showing the days of employment of the second party during the period from October,2013 to September, 2021, but curiously enough it has not produced the Attendance Register to disprove the assertion of second party that despite his reporting to duty the first party was engaging outsourcing personnel to perform his duty. Withholding of such a vital document therefore, creates a doubt over the mind of the Tribunal that had the document been produced the truth or otherwise of the claim could have been unveiled, particularly when MW No.1 in his cross-examination at Para. 28 has stated that the second party was registering his attendance on the date of his attending duty. In the above premises, non-rendering of continuous service by the second party, as pleaded by the management, appears to be an artificial gap in the employment of the second party maintained by the management to deprive him of the benefits of the provisions of the Act, even though there is a clear admission of the management through MW1 that the second party has worked continuously under the first party from the 1st October 2013 to the 30th September 2021.

8. Challenge is also made by the first party management to the assertion of the second party that he was refused employment on the ground that on and from the 1st October 2021 the second party on his own did not report for duty and therefore it is false to allege that he was ever refused employment by the first party No. 1. On perusal of documents available on record the Tribunal failed to notice any document from the side of the management asking the second party to resume duty on his remaining absent from duty on and from the 1st October 2021 to appreciate the stand of the first party No.1 that the second party was called upon to resume duty. On the other hand, MW1, who is none other than the Project Director of the first party No. 1 during evidence in cross-examination feigned his knowledge regarding issuance of any notice to the second party for his absence from duty preceding the alleged date of refusal of employment. Abandonment of

employment is purely an intention on the part of an employee which can be assessed basing on the circumstances of a particular case and here in the present case no such inference is visible that the second party had any intention to quit his employment, particularly when he was in the employment of the first party No.1 not only for a couple of months or year but for more than eight years. Therefore, it is hard to believe that the second party had any intention to abandon his employment on and from the 1st October 2021. Rather, for the shortcomings on the part of the first party No. 1, as indicated *supra*, the stand of the second party that he was refused employment by the first party No. 1 w.e.f. the 1st October 2021 seems to be probable. Accordingly, the said action of the first party No. 1 is held to be termination of his service and in absence of proper compliance of the mandatory provisions, the action of the first party No. 1 can in no way be held to be either legal or justified.

Issue No. (ii) is answered accordingly in favour of the second party.

9. *Issue No. (iii)*—In view of the findings arrived at on issue No. (ii), the next question that falls for determination is as to what relief the second party is entitled to.

The learned counsel representing the first party No. 1 referring to the documents Ext. G (the copy of letter of the Joint Director(P&SAD) of the Directorate of Animal Husbandry & Veterinary Services, Odisha, Cuttack) submitted that pursuant to the instructions contained in the letter the Breeder Birds of IPDP were shifted to Chiplima on the 3rd November 2020 and it was intimated to the CDVO, Khordha vide Letter No. 44/IPDP, dated the 27th March 2025 of the first party No. 1 and therefore, when the IPDP Operations were completely ceased no relief is available to the second party as claimed in the instant application. *Per contra*, it was submitted on behalf of the second party that there being evidence on record, elicited through MW1 during his cross-examination at Para. 30 regarding engagement of other workers through service providers and further as it reveals from the annexure to Ext. K, the proceedings of the technical committee that the organization of the first party No. 1 is not completely closed and there was a suggestion for shifting of the IPDP, Laxmisagar to outskirts of human habitat of BMC, Bhubaneswar, which is evidently still pending consideration at the Government level, the second party is entitled to the relief(s) as claimed in his application.

10. There is no dispute over the fact that the second party was through-out engaged under the first party No. 1 as a daily wage labourer and his claim for regularization, as made pursuant to the direction of the Hon'ble Court in W.P.C. (OAC) No. 1061 of 2016 (Ext. C) was rejected by the Authority vide Ext. D. Keeping in view the status of the second party under the first party No. 1, a reference in this regard may be made to the judgment of the Hon'ble Apex Court in the case of B.S.N.L. *Vs*. Bhurumal, reported in AIR 2014 (SC) 1188, wherein their Lordships have held as follows :—

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> 23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or *mala fide* and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases

reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization [See: State of Karnataka *Vs*. Uma Devi (2006) 4 SCC 1]. Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

11. Keeping an eye over the settled proposition of law as mentioned, *supra*, the status and length of service of the second party, so also his age, the Tribunal is not inclined to pass an order of reinstatement in his favour, but at the same time considering his length of employment under the first party and the fact that his disengagement is in contravention of the provisions of the Act, a lump sum compensation in lieu of his reinstatement and back wages is found to be an appropriate relief in his favour and accordingly the first party No. 1 is directed to pay him a compensation of Rs. 1,00,000 (Rupees one lakh) only in lieu of the relief (s) claimed by him in his application within a period of two months of the date of publication of the Award in the Official Gazette.

The 2-A(2) application is disposed of accordingly.

Dictated and corrected by me

BENUDHAR PATRA
09-07-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
09-07-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar

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By order of the Governor

MADHUMITA NAYAK

Special Secretary to Government

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